

the required subscriber information associated with switching a toll free number from reserved or assigned to working status,³⁸ and, in the event of noncompliance, impose appropriate sanctions.³⁹ In this regard, AT&T notes that the Commission has statutory authority under the Communications Act to issue cease and desist orders,⁴⁰ initiate inquiries on its own motion,⁴¹ penalize violation of its rules,⁴² and impose forfeitures.⁴³ In accordance with the requirements of the Act, in imposing any forfeiture, the Commission should "take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁴⁴ In any such enforcement proceeding, the Commission could also take

³⁸ For the reasons explained in Section I, supra, RespOrgs should not be required to retain records of toll free numbers held in "reserved" status, but not activated.

³⁹ Customers that hoard numbers are difficult to identify, and carriers should not be required to continually monitor the usage and question the motives of their customers.

⁴⁰ 47 U.S.C. § 312(b).

⁴¹ 47 U.S.C. § 403.

⁴² 47 U.S.C. § 502.

⁴³ 47 U.S.C. § 503(b); see generally 47 C.F.R. § 1.80.

⁴⁴ 47 U.S.C. § 503(b)(2)(D).

into consideration whether or not the alleged violator followed Industry Guidelines in determining whether the party "warehoused" numbers. Only the Commission should be authorized to impose monetary forfeitures. However, the SMS Administrator can and should be authorized to reclaim toll free numbers that remain in a particular status (e.g., reserved) for a longer period than permitted under Industry Guidelines.

AT&T supports the Commission's proposal to impose a cap on the total quantity of numbers that can be reserved by RespOrgs to further efficient use of toll free numbers and minimize warehousing. A RespOrg should be limited to reserving a maximum of 8 percent of the total working toll free numbers controlled by that entity. This would be a substantial reduction from the normal 15 percent cap specified in Industry Guidelines,⁴⁵ and reflects the industry consensus cap as of June 1995, when imminent exhaustion of 800 numbers required that the reservation cap be reduced from 15 percent.⁴⁶ Although AT&T believes that an 8 percent reservation cap is workable, the 3 percent cap

⁴⁵ The Industry Guidelines provide a cap on reserved numbers of the greater of 1,000 numbers or 15 percent of a RespOrg's total quantity of working 800 numbers. See Industry Guidelines at Section 2.2.5.

⁴⁶ However, the lower industry consensus cap, effective June 8, 1995, was virtually immediately superseded by the Bureau's more stringent emergency measures. See Notice, ¶¶ 9, 33.

proposed in the Notice is so low that the requests of customers for new numbers would be continually frustrated and delayed, and RespOrgs would experience costly administrative difficulties associated with ongoing rejection, delay and re-submission of customer requests.⁴⁷

IV. THE COMMISSION SHOULD GRANT A RIGHT OF FIRST REFUSAL TO "VANITY NUMBERS" IN THE 888 SAC FOR UP TO 15 PERCENT OF A RESPORGS' WORKING 800 NUMBERS.

The Commission inquires "whether the current holder of an 800 vanity number should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code;"⁴⁸ "the potential number of equivalent vanity numbers that might be reserved for 888 and subsequent toll free codes;"⁴⁹ whether there should be a payment or competitive bidding process associated with a right of first refusal;⁵⁰ and whether standard industrial classification codes ("SICs") could be used to preclude a competitor of an existing 800 subscriber from obtaining its equivalent number in the new toll free code.⁵¹

⁴⁷ Notice, ¶ 33.

⁴⁸ Notice, ¶ 35.

⁴⁹ Notice, ¶ 40.

⁵⁰ Notice, ¶ 41.

⁵¹ Notice, ¶ 45.

AT&T believes that there should be a right of first refusal to allow certain holders of 800 vanity numbers to replicate those numbers in the 888 code. Given the rapid consumption of toll-free 800 numbers, it is critical that the new supply of toll-free numbers created by opening of the 888 SAC not also be prematurely exhausted. To achieve this goal and allow an efficient introduction of 888 services that will help minimize consumer confusion, brokering, warehousing, billing of unwanted calls, and fraud, the Commission should allow a limited modification, for a short transition period, of its "first come, first served" toll free number assignment policy that now applies to the SMS 800 database.

Specifically, the Commission should adopt a rule that would permit current RespOrgs to submit requests to SMS 800 for purposes of replicating in the 888 SAC the equivalents of current 800 vanity numbers (specifically, those that are advertised, widely known and called by consumers), during a specified time frame that precedes the general availability date of numbers in the 888 SAC, up to 15 percent of each RespOrg's total base of working 800 numbers.⁵² AT&T believes that 15 percent would be

⁵² Permitting only the "current" RespOrg to replicate an 800 number is necessary to ensure it is the incumbent 800 customer who is replicating the number. This limitation would not affect a subscriber's ability to change service providers or RespOrgs either before or after the replication process.

sufficient under its proposed definition of a "vanity number," which properly excludes personal 800 numbers and internal toll free applications.

Allowing RespOrgs to replicate a small percentage of their working base will avoid all RespOrgs immediately seeking to replicate all of their 800 numbers in the 888 SAC, which could lead to warehousing and premature exhaustion of 888 numbers. Also, without the proposed set aside limit, there will be tremendous opportunities for brokering, as entities rush to obtain the 888 equivalents of

(footnote continued from previous page)

The SMS should accommodate submission of vanity number replication requests by marking those numbers "unavailable" in the SMS database. This replication process for vanity numbers must precede the 45-day early reservation interval discussed in Section II, supra, for new numbers.

When 888 becomes available (or a few days before March 1, 1996), activations of new numbers reserved during the early reservation window should be processed. Upon completion of activation of those new numbers, the replication numbers previously marked "unavailable" should be activated within the following 45 days or automatically revert back to SMS as available to other customers. This prioritization should minimize possible negative SMS system capability impacts on "new" customers (including those that reserved early and those first attempting to reserve new numbers starting at 888 availability).

The one-time replication of vanity numbers (up to 15 percent of a RespOrg's total base of working 800 numbers) should be in addition to the 8 percent reservation threshold discussed in Section III, supra. When the 888 SAC becomes generally available, all 888 number requests (including 800 number replication requests) would be governed by the same first come, first served policies that now apply to the SMS 800 database.

popular 800 vanity numbers -- only to sell them at a premium to incumbent 800 subscribers. A limited set aside will also minimize calling party confusion (as well as possible fraud), because callers dialing a particular vanity number (e.g., 1-888-THE-CARD) will be routed to the same business entity (American Express) as had they dialed the 800 number.⁵³ Permitting replication also reduces the potential costs to carriers and subscribers (and consumer frustration) associated with wrong number calls. For example, if the 888 equivalent to a major airline's reservation center 800 number were assigned to another subscriber, the new subscriber could be faced with thousands of unwanted calls daily.

By contrast, neither payment for the equivalent number in the new toll free SAC nor a competitive bidding

⁵³ Replication would also minimize customer concerns over trademark infringement and unfair competition disputes among subscribers whose toll free numbers serve as their trade names or are associated with the goodwill of the customer's business. For example, some toll free subscribers have had to initiate litigation against certain of their competitors who have sought to capitalize on the marketplace confusion created by the similarity of their 800 numbers. Trademark law does not adequately protect current holders of 800 numbers against a user of an equivalent number. Not all vanity number customers currently have or would be able to obtain trademark or service mark registrations from the Patent and Trademark Office. Moreover, enforcement of trademark infringement and unfair competition claims involves expensive, time-consuming judicial proceedings with uncertain outcomes for the litigants. The proposed replication process would provide much greater certainty and protection of incumbent vanity number customer's investments

process would further these fundamental objectives. Requiring payment for the right of first refusal or awarding the equivalent of an existing vanity number to the highest bidder simply rewards the party willing (and able) to pay most for the number. It would not minimize customer confusion, avoid brokering, warehousing, nor billing of unwanted calls. Accordingly, there is nothing to be gained by exacting a payment for the right of first refusal.⁵⁴

For these reasons and to further the public interest, the Commission should authorize and require the SMS to permit RespOrgs to replicate up to 15 percent of their working 800 numbers in the 888 SAC. To meet the stated goals of replication, the 800 numbers qualifying for replication should be ones that are advertised, widely known and accepted by the general public and called by consumers. Each RespOrg should be allowed to determine which of its 800 number applications, meeting the above standard, will be eligible for replication. These procedures will permit the orderly transition to and opening up of the 888 SAC, thereby serving the public interest.

⁵⁴ AT&T also does not support the proposed use of SIC codes as a means of withholding the equivalent 888 number from competitors of the 800 vanity number subscriber. Because of the impreciseness of SIC codes, their inability to accurately identify competitors, and the likelihood of abuse by incumbent subscribers (who would have the incentive to identify multiple classifications in order to preempt anyone else from obtaining a desirable 888 number), adoption of this proposal would not further the efficient use of toll free numbers.

- 28 -

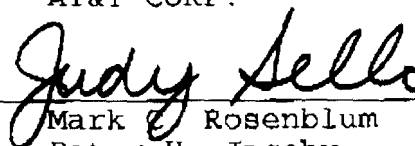
CONCLUSION

In sum, the Commission should promote the efficient, fair, and orderly allocation of toll free numbers as suggested herein.

Respectfully submitted,

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